



IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

Legislative Services Agency

July 6, 2006

2006 Interim No. 4

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Bound Journals Needed

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Iowa Legislative Interim Calendar and Briefing is published by the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

July

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Monday, July 10, 2006—CANCELED

Government Oversight Committee

Tuesday, July 11, 2006

Administrative Rules Review Committee

9:00 a.m., Room 24, Statehouse

Friday, July 14, 2006

2006 Extraordinary Session of the Eighty-first General Assembly

10:00 a.m., Senate and House Chambers, Statehouse

Tuesday, July 18, 2006

Government Oversight Committee

11:00 a.m., Room 102—Supreme Court Consultation Room, Statehouse

Wednesday, July 19, 2006

Government Oversight Committee

9:00 a.m., Room 102—Supreme Court Consultation Room, Statehouse

Capital Projects Committee of the Legislative Council— TENTATIVE

1:00 p.m., Room 22, Statehouse

Monday, July 24 and Tuesday, July 25, 2006

Government Oversight Committee

Monday at 11:00 a.m. and Tuesday at 9:00 a.m.; Room 102—Supreme Court Consultation Room, Statehouse

Monday, July 31 and Tuesday, August 1, 2006

Government Oversight Committee

Monday at 11:00 a.m. and Tuesday at 9:00 a.m.; Room 102—Supreme Court Consultation Room, Statehouse

Monday, August 14 and Tuesday, August 15, 2006

Government Oversight Committee

Monday at 11:00 a.m. and Tuesday at 9:00 a.m.; Room 102—Supreme Court Consultation Room, Statehouse

August

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DISTRIBUTION OF CALENDAR

In order to achieve savings in mailing and printing costs, beginning in July, the 2006 Interim Calendar and Briefing will primarily be distributed by electronic mail and Internet posting. The Internet site to access PDF versions of the publication is: <http://www.legis.state.ia.us/Current/Interim/>

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AGENDAS

INFORMATION REGARDING SCHEDULED MEETINGS

Administrative Rules Review Committee

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

Location: Room 24, Statehouse

Date & Time: Tuesday, July 11, 2006, at 9:00 a.m.

Contact Person: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084

Agenda: Published in the Iowa Administrative Bulletin <http://www.legis.state.ia.us/Rules/Current/Bulletin/>.

Government Oversight Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Senator Ron Wieck

Co-chairperson: Representative Dwayne Alons

Location: Room 102, Statehouse

Dates & Times: Tuesday, July 18, 2006, at 11:00 a.m.; and Wednesday, July 19, 2006, at 9:00 a.m.

Legislative Services Agency Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Wulf, Fiscal Services, (515) 281-3250;

Sam Leto, Fiscal Services, (515) 281-6764

Agenda: To be announced.

Internet Page: <http://www3.legis.state.ia.us/ga/committee.do?id=41>

Capital Projects Committee of the Legislative Council—TENTATIVE

Chairperson: Senator Thomas Courtney

Vice chairperson: Representative Libby Jacobs

Location: Room 22, Statehouse

Date & Time: Wednesday, July 19, 2006, at 1:00 p.m.

Legislative Services Agency Contacts: Dennis Prouty, (515) 281-3566; Rachele Hjelmaas, Legal Services, (515) 281-8127; Mike

Goedert, Legal Services, (515) 281-3922; Dave Reynolds, Fiscal Services, (515) 281-6934

Agenda: To be announced.

Internet Page: <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=45>

Government Oversight Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Senator Ron Wieck

Co-chairperson: Representative Dwayne Alons

Location: Room 102, Statehouse

Dates & Times: Monday, July 24, 2006, at 11:00 a.m.; and Tuesday, July 25, 2006, at 9:00 a.m.

Legislative Services Agency Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Wulf, Fiscal Services, (515) 281-3250;

Sam Leto, Fiscal Services, (515) 281-6764

Agenda: To be announced.

Internet Page: <http://www3.legis.state.ia.us/ga/committee.do?id=41>

Government Oversight Committee

Co-chairperson: Senator Thomas Courtney

Co-chairperson: Senator Ron Wieck

Co-chairperson: Representative Dwayne Alons

Location: Room 102, Statehouse

Dates & Times: Monday, July 31, 2006, at 11:00 a.m.; and Tuesday, August 1, 2006, at 9:00 a.m.

Legislative Services Agency Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Wulf, Fiscal Services, (515) 281-3250;

Sam Leto, Fiscal Services, (515) 281-6764

Agenda: To be announced.

Internet Page: <http://www3.legis.state.ia.us/ga/committee.do?id=41>



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INFORMATION REGARDING RECENT ACTIVITIES

GOVERNMENT OVERSIGHT COMMITTEE

June 26 and 27, 2006

Co-Chairperson: Senator Thomas Courtney

Co-Chairperson: Senator Ron Wieck

Co-Chairperson: Representative Dwayne Alons

Overview. The primary focus of the meetings concerned continued questioning relating to the Central Iowa Employment and Training Consortium (CIETC).

CIETC Inquiry. The Committee continued its inquiry relating to CIETC with testimony from the following individuals:

- **Program Operations.** Mr. Jack Cline, Operations Program Manager for CIETC, who was accompanied by Ms. Deborah M. Tharnish acting as CIETC's legal counsel. Mr. Cline declined to provide an opening statement and answered a number of questions from Committee members. Mr. Cline described various duties that he had performed during his career at CIETC, and noted that he currently oversees the delivery of program services and program evaluations. Mr. Cline discussed CIETC responsibilities, including the hosting of job fairs and sponsoring job training. Mr. Cline described CIETC's relationship with Iowa Workforce Development in providing employment and training services and programs, including programs under the Workforce Investment Act (under the United States Department of Labor) programs commonly known as the Youth Program and the Dislocated Worker Services Program as well as the PROMISE JOBS Program (under the United States Department of Health and Human Services). He discussed tracking employment, and the degree to which employers rely upon CIETC services. He noted that CIETC employed approximately 70 persons and discussed state and federal funding sources used to support employee salaries and supplemental payments. Mr. Cline stated that he did not have direct knowledge of any abuses occurring at CIETC, and could not comment upon a number of questions regarding budget or personnel practices. Mr. Cline noted that the position held by Ms. Ramona Cunningham, CIETC's former Chief Executive Officer and Mr. John Bargman, CIETC's former Chief Operating Officer, are currently vacant, and referred the Committee to Mr. Doug Williams, Vice President of Business Services for Des Moines Area Community College who is carrying out CIETC administrative duties under a special agreement. He explained that CIETC's Board of Directors, also referred to as local elected officials, had regularly met in joint session with the Regional Workforce Investment Board for Region 11 and discussed issues involving possible conflicts of interest.
- **Accounting Practices.** Ms. Tammy Higar, Administrative Assistant for CIETC, was also accompanied by Ms. Tharnish. Ms. Higar declined to provide an opening statement and answered a number of questions from Committee members. Ms. Higar described her duties at CIETC, which included keeping payroll records and processing salary and supplemental payments to CIETC employees under the direction of Ms. Cunningham or Mr. Bargman. Ms. Higar stated that she has been interviewed by federal and state enforcement agencies, including the Federal Bureau of Investigation. She discussed her working relationship with Ms. Karen Tesdall (Chief Accountant) and Ms. Sherry Howard (Board Secretary/Treasurer); her change in duties when Mr. Bargman assumed supervisory duties; the installation of a new electronic accounting program which became operational in July 2003; and routine and extraordinary CIETC accounting practices during the period under review, including the use of signature stamps used to authorize the payment of supplemental payments, and Ms. Cunningham's use of a credit card in the name of board member Mr. Tom Vlassis which was sometimes paid late using CIETC funds. Ms. Higar stated that disciplinary action had been taken against her as a result of once discussing salary and supplemental payment practices (a five-day suspension), and understood that she would be subject to further employment sanctions if she continued to raise questions regarding payments. Ms. Higar stated her impression that supplemental payments were made based on favoritism, decisions regarding supplemental salary payments were confidential and informal, and that she was not aware of objective criteria used to support the timing or amount of supplemental payments. Ms. Higar stated that payments were authorized by letters purportedly signed by Mr. Archie Brooks, who served as the board's chairman. She also noted that a person was enrolled in CIETC's health insurance plan although the person did not meet necessary qualifications. Ms. Higar stated that the working atmosphere at CIETC has dramatically improved, and stated that she continues to believe in its mission.
- **Administrative Practices.** Ms. Diane Bolden, Administrative Assistant for CIETC, was also accompanied by Ms. Tharnish. Ms. Bolden declined to provide an opening statement and answered a number of questions from

(Government Oversight Committee continued from Page 3)

Committee members. Ms. Bolden stated that she served as Executive Secretary to Ms. Cunningham and described her working relationship with Ms. Cunningham. According to Ms. Bolden, she routinely prepared minutes for the board, and stated that Ms. Cunningham directed her to correct or change the minutes of board meetings, including by listing absent members as present. She also stated that she amended board bylaws which did not receive board approval. She discussed the removal of a board policy prohibiting nepotism, and discussed the practice of nepotism at CIETC. Ms. Bolden noted that board meetings frequently lasted for not more than 20 minutes, but commented that recently meetings have lasted much longer. She briefly dis-



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cussed functions performed by CIETC, stating that it assists a number of employers rather than a few large employers, and stated her belief that it does not provide duplicative services. In response to a question, Ms. Tharnish responded that the board has not determined whether it will seek to recover moneys paid to CIETC executive officers. The Committee discussed how appointments to regional workforce investment boards are made, the qualifications of members, and the retention of members. Ms. Bolden discussed the process of approving supplemental payments which were approved by Mr. Brooks based upon a board reauthorization, although Ms. Bolden questioned whether the board had previously granted the original authorization.

Ethics Procedures and Policies – Recommendations. Mr. Charlie Smithson, Executive Director and Legal Counsel, Ethics and Campaign Disclosure Board, discussed ethics procedures and policies which could avert the development of situations similar to CIETC in other agencies, and proposed related legislative changes. Mr. Smithson indicated that CIETC does not fall under the purview of the board, which pursuant to Iowa Code Chapter 68B oversees the Executive Branch. He stated that one meeting has been held with the State Auditor's Office regarding the potential conflict of interest posed by the employment of Ms. Deb Dessert Bargman by the office and her contractual relationship with CIETC, and that a follow-up meeting will be scheduled. He related discussions with Iowa Workforce Development regarding procedures in place for terminated CIETC employees seeking unemployment compensation; monthly meetings with the State Ombudsman's Office in an effort to enhance coordination between that office and the board; and the review of existing administrative rules and the establishment of new ones relating to use of confidential information, misuse of public property, abuse of office, and conflicts of interest. Mr. Smithson indicated that he continues to monitor the CIETC situation from an ethics standpoint. He identified as potential legislative changes extension of ethics jurisdiction to intergovernmental arrangements entered into under Iowa Code Chapter 28E or at least a clarification of the legal status of quasi-governmental entities relating to ethics, development of uniform conflict of interest standards, refinement of nepotism provisions in Iowa Code Chapter 71 and consideration of non-family relationships, and increased education and training for new members joining boards and commissions. Committee discussion included a request for legislation prohibiting the payment of bonuses to state employees and Iowa Code Chapter 28E entities, whether the subpoena deadline contained in the resolutions passed during the 2006 Legislative Session conferring authority to the Senate and House standing committees on Government Oversight regarding the CIETC investigation are workable or should be extended, creation of a training manual for new board members, and the need to balance increased board member accountability while not discouraging participation.

Procedural Business. Committee members engaged in a general discussion of the future direction of the Committee relative to CIETC, proposed timelines regarding concluding the investigation, assessment of the amount of information obtained thus far and possible investigation outcomes, and upcoming agendas. The Committee then moved into a closed session for a discussion with legal counsel retained by the respective political party caucuses.

Additional Information. Committee meetings involving CIETC are being recorded, and can be linked via the opening page of the General Assembly's Internet homepage. The website address for the recorded meetings is: http://www4.legis.state.ia.us/lfb/SubCom/related_links/Oversight_Recordings.html.

Next Meeting. The meeting scheduled for Monday, July 10, 2006, was canceled. The next meeting is scheduled for Tuesday, July 18, 2006, at 11:00 a.m. and Wednesday, July 19, 2006, at 9:00 a.m. at the Statehouse.

LSA Contacts: Rick Nelson, Legal Services, (515) 242-5822; Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764

Internet Page: <http://www3.legis.state.ia.us/ga/committee.do?id=41>

MEDICAL ASSISTANCE PROJECTIONS AND ASSESSMENT COUNCIL

June 30, 2006

Co-chairperson: Senator Jack Hatch

Co-chairperson: Senator Maggie Tinsman

Co-chairperson: Representative Danny Carroll

Background. The Medical Assistance Projections and Assessment Council (MAPAC) was established in 2005 Iowa Acts, H.F. 841, section 21, to provide oversight for the IowaCare Program and the Medical Assistance (Medicaid) Program. The Council is required to meet at least quarterly.

Presentation by the Department of Human Services (DHS). Assistant Medicaid Director Jennifer Vermeer, accompanied by DHS Director Kevin Concannon and Medicaid Director Gene Gessow, presented a status report regarding the IowaCare Program. Ms. Vermeer reported that current enrollment in the program is 17,641 and that 64 percent of the active enrollees have remained in the program for six months or more. All program expenditures are being matched by federal funds, which results in the program goal of covering the loss of intergovernmental transfer revenue in the amount of \$65 million. Ms. Vermeer also discussed premiums, disenrollments, and the various health care reform projects that were included in H.F. 841. Ms. Vermeer noted that other



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issues relating to the Medicaid Program are the new federal requirements relating to documentation of citizenship for the program and the Centers for Medicare and Medicaid Services Demonstration to Maintain Independence and Employment Grant for which DHS has applied. The grant would provide \$27 million to the state over a three-year period to provide medical coverage and other supports to parolees with serious mental illness to maintain employment and prevent dependence on SSI and other public assistance programs. The program would be implemented in partnership with the Department of Corrections and vocational rehabilitation.

Presentation by University of Iowa Hospitals and Clinics (UIHC). Dr. Stacey Cyphert, Special Advisor to the President for Health Science Government Relations, UIHC, provided information for UIHC as one of the IowaCare providers. Dr. Cyphert reported that 7,764 unique IowaCare and Chronic Care Program patients have been seen at the UIHC as of June 22, 2006, and these patients have made in excess of 40,000 visits. Eighty-nine percent of counties had the same or a greater number of enrolled IowaCare and Chronic Care Program beneficiaries through May compared with the State Papers and Orthopedic Papers utilization in the previous fiscal year. Overall UIHC has seen 3,273 more unique IowaCare and Chronic Care patients through June 22, 2006, than State Papers and Orthopedic Papers patients in the previous fiscal year. The 2006 General Assembly authorized an increase of \$10.6 million over the original \$27.3 million appropriation for the UIHC program for fiscal year 2005-2006 and nearly \$32 million has already been paid to the UIHC with millions in claims still outstanding. Dr. Cyphert noted that the appropriation of \$27.3 million for fiscal year 2006-2007 is unlikely to be sufficient; new federal requirements for documentation of citizenship will likely result in delays in authorization of IowaCare coverage status, which may create hardships for patients and nonnetwork providers; if IowaCare enrollment continues to grow it may challenge the UIHC's ability to meet demand in a timely manner; the UIHC is planning to enhance access to pharmaceuticals and durable medical equipment for IowaCare beneficiaries contingent upon completion of a Chapter 28E agreement; implementation of the nurse helpline for IowaCare beneficiaries is contingent on completion of a separate Chapter 28E agreement between the UIHC and DHS; and plans for the handling of the comprehensive medical examination, personal health improvement plan, and health risk assessment are unclear.

Presentation by Broadlawns Medical Center (BMC). Ms. Mikki Steir, BMC Senior Vice President, Government and External Relations, presented information for BMC as a provider under the IowaCare Program.

Ms. Steir noted that under the IowaCare program, patients do not receive mental health services or pharmaceuticals, but if the patient is also eligible for BMC's Community Care Program (with income up to 200 percent of the federal poverty level) the patient is provided with outpatient pharmaceuticals and Polk County Health Services provides mental health care services.

As of June 30, 2006, 9,047 IowaCare enrollees were Polk County residents and eligible for care at BMC. BMC is providing 37 percent of the care to IowaCare enrollees. With regard to disenrollments, of the 4,887 individuals who disenrolled from IowaCare, 1,976 are residents of Polk County. There were issues with patients understanding the hardship declaration that allows an enrollee to forego the premium payment requirement, but one-on-one communication as well as having DHS staff on-site has helped with this issue. Collection of premiums has been an ongoing

(Medical Assistance Projections and Assessment Council continued from Page 5)

issue, but DHS and BMC are working on rules to enable the collection of cash payments at BMC. BMC and DHS are working on facilitating reenrollment of current IowaCare patients as well as provisions for the new federal requirements for verification of citizenship and identity. BMC and UIHC are still working on the issue of transfer of patients from BMC to UIHC for tertiary care. BMC is also working on how to provide dental care under the IowaCare Program.

Medicaid Forecast Update. Ms. Kerri Johannsen, Legislative Services Agency (LSA), Fiscal Division, discussed the most recent Medicaid Forecast agreed upon by DHS, LSA, and the Department of Management. For fiscal year 2005-2006, an ending balance range of negative \$3.0 million to positive \$5.0 million is projected. For fiscal year 2006-2007, the state appropriation total of \$759.2 million is projected to be short in the range of \$25.0 to \$52.0 million with a midpoint of \$38.5 million.

Other Council Discussion. Co-chairperson Tinsman noted that the issue of options to unify services to elder Iowans had been referred to MAPAC in 2005 by the Legislative Council, and she asked if the Council wanted to review this issue. Members expressed concern that there are many programmatic issues that might need to be overcome in order to unify services that are currently under the purview of various departments. Members determined that the issue might be one of communication and coordination and asked for more information regarding ongoing attempts to provide enhanced communication and coordination. Co-chairperson Tinsman asked that the information provided to the Council also include the report of the 2005 legislative interim discussion regarding long-term care.

Recognition of Senator Tinsman. At the request of Co-Chairperson Hatch, the Council expressed its gratitude to Senator Tinsman for her service to the state, including her dedication to health and human services issues, during her tenure in the Iowa Senate.

Next Meeting. The next meeting of the Council will be held during the first quarter of the new fiscal year, with the date and location of the meeting to be announced at a later date.



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LSA Contacts: Patty Funaro, Legal Services, (515) 281-3040; John Pollak, Legal Services, (515)281-3818

LEGAL UPDATES

Purpose. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the nonpartisan Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

LEGAL UPDATE: Executive Order Number 48—Teacher Pay-for-Performance Legislation June 1, 2006

Background. The General Assembly passed House File 2792 on May 3, 2006. The Act established a Pay-for-Performance Program and allocated to the Department of Management \$1 million for FY 2006-2007, \$2.5 million for FY 2007-2008, and \$5 million for FY 2008-2009 for the program from moneys appropriated to the Student Achievement and Teacher Quality Program. The Act established a Pay-for-Performance Commission as a part of the executive branch and set forth the membership and duties of the commission. Of the amount allocated for FY 2006-2007, the Act distributes \$150,000 to the Institute for Tomorrow's Workforce, created pursuant to Code Section 7K.1, for its activities. Code Section 7K.1 creates the "Institute for Tomorrow's Workforce, an Educational Foundation" and provides a match requirement for any moneys appropriated by the General Assembly for purposes of the foundation.

Under the Act, the commission was to be composed of six voting members as follows: one classroom teacher selected jointly by the Iowa State Educational Association (ISEA) and the Professional Educators of Iowa (PEI), one principal selected by the School Administrators of Iowa (SAI), one private sector representative selected by the Iowa Business Council, one industrial engineer appointed by the American Society of Engineers, one small business private sector employer who employs at least 50 people in a targeted industry selected by the Governor, and one professional economist with a doctoral degree with experience and knowledge in student achievement using test scores to measure student progress selected by the voting members of the commission. The nonvoting members

(Legal Update: Executive Order Number 48—Teacher Pay-for-Performance Legislation continued from Page 6)

were to include one representative from the Department of Education (DOE), two members of the Senate, and two members of the House of Representatives.

The Act charged the commission with designing and implementing a pay-for-performance program and providing a study relating to teacher and staff compensation containing a pay-for-performance component and which is to measure the cost and effectiveness in raising student achievement of a compensation system that provides financial incentives based on student performance. Though the commission was established as part of the executive branch, the Act required that the Legislative Services Agency, upon request, provide technical and administrative support to the commission.

Beginning July 1, 2006, the commission must gather sufficient information to identify a program based upon student achievement gains and global content standards where student achievement gains cannot be easily measured. The commission must review pay-for-performance programs in both the public and private sector and based on this information and design a program utilizing both individual and group incentive components. At least half of any available funding identified by the commission must be designated for individual incentives.

Item Veto. While the Governor approved much of the language of H.F. 2792 regarding the program, on June 1, 2006, the Governor item vetoed portions of Section 27, subsections 1, 4, and 5 of the Act, which related to membership on the Pay-for-Performance Commission, staffing for the commission, the system for measuring student achievement to be developed by the commission, and a prohibition against individual salary adjustments for teachers who do not demonstrate a satisfactory level of performance under the program, and directions to DOE to create a teacher remediation program. The item veto message stated that the language was not part of an agreed upon negotiation and is too prescriptive.

Executive Order Number 48. Also on June 1, 2006, the Governor issued Executive Order Number 48, directing the Institute for Tomorrow's Workforce (established under Code Section 7K.1) to propose a design for a pay-for-performance program and conduct a study of the design as provided in H.F. 2792, section 27. The order further directs the institute, in developing the design, to seek input from and consult education practitioners and representatives from the Iowa Association of School Boards, the Urban Education Network, ISEA, SAI, and PEI. The order requires that the study measure the cost and effectiveness in raising student achievement of a compensation system that provides financial incentives based on student performance. The order directs the Department of Education to provide technical and administrative assistance to the institute.



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The order apparently selects the institute to perform the statutory duties of the commission, to propose the design for a pay-for-performance program and to conduct the study, by stating the following: the General Assembly created the institute in the previous year to provide a long-term forum for bold, innovative recommendations to improve Iowa's education system to meet the workforce needs of Iowa's new economy; the institute is tasked with reviewing the state's education accountability measures and identifying effective education structure and delivery models that promote optimum student achievement; the institute has recommended that Iowa increase teacher salaries and complete the state's commitment to a bold new professional teacher performance and compensation model that rewards educators for their own knowledge, skills, and practices that prepare students for the 21st century; and that the institute's membership is broad-based and reflects the awareness that meaningful and lasting educational change requires sustained support and collaboration from leaders in business, industry, government, and education.

LSA Contact: Kathy Hanlon, Legal Services, (515) 281-3847

LEGAL UPDATE: No-Contact Orders—Harassment

Filed by the Iowa Supreme Court

February 3, 2006

State v. Wiederien

No. 109/04-0815

http://www.judicial.state.ia.us/supreme_court/recent_opinions/20060203/04-0815.asp

(Legal Update: No-Contact Orders—Harassment continued from Page 7)

Background Facts and Procedure. The defendant was charged with the crime of harassment in the third degree in violation of Iowa Code §708.7. At the defendant's initial appearance in court, the magistrate issued a no-contact order pursuant to Iowa Code §708.12 ordering the defendant to have no contact with the alleged victim. After a bench trial, the magistrate found the defendant not guilty on the harassment charge, but found that the alleged victim "had a legitimate right to feel nervous and afraid" and continued the no-contact order for two years from the original issue date. The defendant appealed the continuance of the no-contact order.

Issue on Appeal. Whether the district court has the authority to continue a no-contact order in a harassment case upon acquittal of the defendant on the underlying harassment charge.

Analysis. The Iowa Supreme Court's analysis focused on statutory interpretation of Iowa Code §708.12. That section provides, in relevant part:

When a person arrested for harassment in violation of section 708.7..., is brought before a magistrate for initial appearance... and the magistrate finds probable cause to believe that a violation of section 708.7... has occurred and that the presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, the magistrate shall enter an order which shall require the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim's immediate family, in addition to any other conditions of release determined and imposed by the magistrate...

...The order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final *disposition* of the criminal or juvenile court action, the court shall make a determination whether the no-contact order should be modified or terminated. If a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a violation of section 708.7..., the court shall modify the no-contact order issued by the magistrate to provide that the no-contact order shall continue in effect for a period of five years from the date that the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation (emphasis added).

In determining the word "disposition" to be ambiguous and therefore subject to interpretation, the Court opined that the word could be interpreted to include a situation where a defendant is acquitted of the underlying harassment charge and a situation where a defendant is convicted for, receives a deferred judgment for, or pleads guilty to the underlying harassment charge. In applying the principles of statutory construction, the Court stated that Iowa Code §708.12 specifically provides the court with the express authority to extend a no-contact order if a defendant is convicted for, receives a deferred judgment for, or pleads guilty to a harassment charge, but does not contain any similar express standards or guidelines as to when the court may extend a no-contact order when the court acquits a defendant on the underlying harassment charge. The Court stated further that:



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The legislature's failure to define the burden of proof and the circumstances in which a court can extend a no-contact order after an acquittal not only fails to give the defendant notice as to when the court will extend the order, but also leads to an arbitrary and discriminatory enforcement of the statute on an ad hoc and subjective basis [in violation of the vagueness and uncertainty of prohibitions of the Due Process Clause of the Fourteenth Amendment to the United States Constitution].

The Court therefore concluded that Iowa Code §708.12, subsection 2, did not allow the magistrate the authority to continue a no-contact order when the defendant is acquitted of the underlying harassment offense.

Conclusion. The Court reversed the judgment of the district court and remanded the case back to the district court to issue judgment consistent with the Court's opinion.

Dissent. Justice Cady filed a dissent in this case, taking issue with the majority's method of statutory interpretation and with the appropriate standard of proof to be applied to the issuance of no-contact orders in cases such as this. Justice Cady opined that the determination of whether to extend the issuance of a prior no-contact order in a harassment case is a collateral civil matter and based only upon a determination of probable cause and a need to pro-

(Legal Update: No-Contact Orders—Harassment continued from Page 8)

tect the safety of victims, which is a "much less exacting" standard than the reasonable-doubt standard necessary to convict a person of the crime of harassment. He noted that reviewing courts are obligated to presume statutes to be constitutional and that courts are obligated to look beyond a statute to determine the appropriate standard of proof when it is absent from a statute. He concluded that the legislature, concerned with its goal of protecting victims of harassment and stalking, intended the court to determine whether to extend or modify a no-contact order in all instances and not just in instances of guilt at the conclusion of the underlying criminal case, as the need to protect a victim is not necessarily eliminated with an acquittal. He further stated that the legislature properly assumed that a previously issued no-contact order entered in a harassment case should not automatically terminate at the conclusion of the underlying criminal proceeding, but that the court should determine whether the no-contact order should be extended or modified.

Editor's Note: House File 2652, effective July 1, 2006, consolidated certain provisions relating to the issuance of and violations of certain civil protective orders and criminal no-contact orders into new Code chapter 664A, including Iowa Code §708.12. See H.F. 2652.

LSA Contact: Rachele Hjelmaas, Legal Services, (515) 281-8127



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Des Moines, IA 50319**

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**Iowa Legislative
Interim Calendar
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